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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053501
Party	Plaintiff Christian M. Ziebarth
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Attachments	P's Notice of Reliance - Disc Rsps CW (2 of 6).pdf(5952684 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

CHRISTIAN M. ZIEBARTH,

Petitioner,

vs.

DEL TACO LLC

Respondent.

Reg. No. 1,043,729
Cancellation No. 92053501

DEL TACO LLC'S RESPONSES TO PETITIONER'S FIRST SET OF
INTERROGATORIES NOS.1-17

In accordance with Rule 33 of Federal Rules of Civil Procedure and Rule 405.04 of the Trademark Rules of Practice, Respondent Del Taco LLC ("Respondent" or "Del Taco") hereby submits the following Answers to Petitioner Christian M. Ziebarth's ("Petitioner" or "Ziebarth") First Set of Interrogatories Nos. 1-17.

PRELIMINARY STATEMENTS AND GENERAL OBJECTIONS

1. These responses are based upon the best information presently available but without prejudice to the right to make modified or additional answers should better or further information become available.
2. Except for the explicit facts stated herein, no incidental admissions are intended hereby. The fact that Respondent responded to any of the Interrogatories is not an admission that it accepts or admits the existence of facts set forth or assumed by any Interrogatory, or that such responses constituted admissible evidence.
3. As this proceeding moves forward, Respondent anticipates other facts, documents or witnesses may be discovered or identified by it. Respondent reserves the

right to alter, supplement, amend, or otherwise modify these responses in any way at any time.

4. Respondent objects generally to Petitioner's interrogatories to the extent that they:

- a. Seek information which is neither relevant to the subject matter of the pending action, nor reasonably calculated to lead to the discovery of relevant or admissible evidence;
- b. Seek information as to the knowledge of Respondent as an entity, where a complete response would require inquiries to be made of each and every one of Respondent's officers, agents, and employees;
- c. Are overly broad and unduly burdensome;
- d. Require Respondent to do more than that which is required under the Federal Rules of Civil Procedure and the Trademark Rules of Practice;
- e. Misstate or provide inaccurate or misleading description of facts.

5. Respondent specifically objects to the definition of "own" or "owned" put forth by Petitioner as overly broad, vague, and unduly burdensome and requires Respondent to speculate and answer as to independent third parties.

SPECIFIC RESPONSES

Interrogatory No. 1:

Provide the physical address for all restaurants open to the public as of December 31, 1995 that were named "Naugles" and owned by Respondent.

ANSWER:

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that

this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See e.g. *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 1995, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 2:

Provide the physical address for all restaurants open to the public as of December 31, 1996 that were named "Naugles" and owned by Respondent.

ANSWER:

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See e.g. *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing,

Respondent states that as of December 31, 1996, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 3:

Provide the physical address for all restaurants open to the public as of December 31, 1997 that were named "Naugles" and owned by Respondent.

ANSWER:

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See e.g. *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 1997, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 4:

Provide the physical address for all restaurants open to the public as of December 31, 1998 that were named "Naugles" and owned by Respondent.

ANSWER:

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See e.g. *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 1998, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 5:

Provide the physical address for all restaurants open to the public as of December 31, 1999 that were named "Naugles" and owned by Respondent.

ANSWER:

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See e.g. *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 1999, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 6:

Provide the physical address for all restaurants open to the public as of December 31, 2000 that were named "Naugles" and owned by Respondent.

ANSWER:

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on

behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See e.g. *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent states that as of December 31, 2000, Respondent did not itself own a restaurant named "Naugles" with a physical address in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Interrogatory No. 7:

Provide the physical address for all restaurants open to the public as of December 31, 2001 that were named "Naugles" and owned by Respondent.

ANSWER:

Respondent reiterates its General Objections and Respondent specifically to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further specifically objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See e.g. *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re*